



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/161380

PRELIMINARY RECITALS

Pursuant to a petition filed October 21, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance, a hearing was held on January 06, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly reduced the petitioner's personal care worker (PCW) and supportive home care (SHC) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Matthew Hayes
Legal Action of Wisconsin
230 W Wells St Room 800
Milwaukee, WI 53203

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jafferlyn Harper-Harris
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner has a diagnosis of spinal stenosis, osteoarthritis, history of left hip replacement surgery, and need of alternate hip surgical repair. She also has chronic pain related to musculoskeletal.
3. The petitioner is eligible and receives services through the Family Care program.
4. The petitioner lives alone in the upper flat of a duplex. She co-owns the duplex with her son who lives in the lower unit.
5. The petitioner had hip surgery in February 2014. After her hip surgery the agency increased the number of Personal Care Worker (PCW) and supportive home care (SHC) hours to address the petitioner's increased needs.
6. On September 5, 2014 the Family Care team conducted a new screen of the petitioner's needs. The agency determined that 16.5 hours per week of PCW and SHC hours would meet the petitioner's current needs. The petitioner previously received 17.5 hours per week for PCW and SHC services. The hours were reduced in the area of mopping and sweeping the kitchen and bathroom floor. The entire dwelling was carpeted, and the petitioner did not need this service. Family Care allowed for additional time for vacuuming. Family Care also did not allow any hours for female pericare or mobility standby. Family Care testified that the petitioner no longer needed these services because she had recovered from her surgery, and was mobile with the use of two canes. Family care allowed for some additional time in other areas including garbage removal, sponge bath, and incontinence care.
7. On September 9, 2014 Family Care sent the petitioner a notice stating that they had reduced the number total PCW and SHC.
8. On October 21, 2014 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the petitioner appropriately sought a fair hearing for a further, *de novo* review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

I conclude that the reduction of FC-paid PCW and SHC hours was appropriate. The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2).

SHC and PCW services are covered services in the statutory note above. The Department's 2014 CMO contracts may be viewed at <https://www.dhs.wisconsin.gov/sites/default/files/legacy/LTCare/StateFedReqs/cy2014mcocontract-amendmnt1.pdf> (last viewed January 2015). Having established that SHC and PCW hours can be a covered service, the question that remains is, how many SHC and PCW hours are essential to meeting the petitioner's needs.

With regard to cleaning time the petitioner testified that she needed additional time for cleaning her basement and the steps to the basement. She testified that there is a bathroom in her basement and that she has a shampoo bowl for her hair there. She argues that due to her history of skin cancer, she prefers to have her hair done in her basement because she believes that it is more sanitary and will reduce her risk of further skin cancer. She also argues that she shares the responsibility in keeping the back hallway, back stairs, and basement clean. Family Care argued that this service would be outside of the scope of SHC. The agency argued that this is a new request for service. Family Care did not evaluate this service in the home.

With regard to pericare, the petitioner argues that she has skin breakdown where her surgery incision was. She also states that due to her incontinence issues she has additional skin breakdown in that area, and needs the assistance with pericare. The Family Care RN highlighted that pericare is a very specific service. The RN described with some medical detail how this care is performed. She stated that the petitioner no longer needs this very specific service. Family Care acknowledged that the petitioner has some issues with skin breakdown, and testified that they allowed for additional time in the area of incontinence care to address these issues.

With regard to mobility and stand by service, the petitioner argues that had an incident where she had to go to urgent care due to a fall. She states that she has problems with her legs and that she cannot stand alone. Family Care argues that the petitioner is mobile with two canes. I note that the screen states that the petitioner is recommended to use a rollator walker, but chooses to use two standard canes. Nonetheless, the Family Care RN observed the petitioner who lives in an upper duplex ascend and descend the stairwell in the front of her home.

In total the petitioner requested an additional 105 minutes for stand by time, 35 minutes for pericare, and an unspecified number of minutes for cleaning her back hallway and basement. This is above and beyond what the petitioner was previously receiving as Family Care had allowed for more minutes to assist the petitioner in other areas. The petitioner's attorney clarified that although they did not have the specific number of hours, they were really requesting that there be no reduction in the petitioner's PCW and SHC hours.

I conclude that Family Care correctly reduced the total number of hours of PCW and SHC from 17.5 hours per week to 16.5 hours per week. This is a one hour per week reduction. Family Care did a very

specific assessment based on the petitioner's actual needs as determined by the Family Care RN. Although Family Care reduced the number of hours in some areas, they increased the number of hours in other areas. This is a very credible approach. The petitioner had a surgery before the previous screen. A person recovering from surgery would need additional PCW and SHC hours. The person would be less mobile and need more assistance in potentially many areas. To reduce the number of hours by one hour per week in the current screen is a reasonable assessment of the petitioner's current needs.

I have considered the petitioner's arguments and do not find the arguments persuasive. To argue that Family Care should cover the cleaning of a basement bathroom when the petitioner she uses two canes and would have to go down two flights of stairs is unreasonable. The petitioner states that she has a fear of cancer when using her home bathroom to do her hair. There is no medical evidence to support this position. The petitioner may have a point about the cleaning of a front and back hallway. These are common areas and the responsibility would likely have to be shared with her son, but I agree with the agency that that would be a new service request. The screen did not address those areas as the screener did not believe that those were areas in the petitioner's home. I also agree with the RN with respect to pericare. The petitioner seemed confused as to what pericare included. Family Care allowed for additional time to address the petitioner's skin break down needs by adding time for incontinence care, which is the area that would address those needs. There was not credible evidence that the petitioner needs stand by assistance. The petitioner was able to walk in and out of the hearing room with her two canes which is consistent with the Family Care RN's observations when conducting the most recent screen.

I further note that this opinion is consistent with the MCO Grievance and Appeal Committee's decision to uphold Family Care's decision to reduce the number of SHC and Attendant Care services.

CONCLUSIONS OF LAW

Family Care correctly reduced the number of PCW and SHC hours from 17.5 to 16.5 hours per week.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

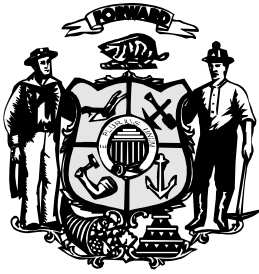
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of January, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 30, 2015.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion
Attorney April Hartman